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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: INCRETIN MIMETICS) MDL Case No.13md2452 AJB (MDD)
PRODUCTS LIABILITY)
LITIGATION) As to all related and member cases
)
) ORDER REGARDING
) APPLICATION AND SERVICE OF
) PROCESS REGARDING THE
) MASTER CONSOLIDATED
) ANSWERS
)
) (Doc. No. 272)

On December 2, 2013, the Court issued an order governing the filing of the Master Consolidated Complaint, the Short Form Complaint (collectively, “Complaints” or “Complaint”), and the Master Consolidated Answer(s), which established the procedures for filing each of the aforementioned documents. (Doc. No. 204.) Following the Court’s December 2, 2013 Order, Plaintiffs filed and the Court approved the Master Consolidated Complaint and the Short Form Complaint. (Doc. Nos. 206, 208.) On December 31, 2013, Defendants Amylin Pharmaceuticals, LLC (“Amylin”), Eli Lilly and Company (“Lilly”), Merck Sharp & Dohme Corp. (“Merck”) and Novo Nordisk Inc. (“Novo”) (collectively, “Defendant” or “Defendants”) filed their respective Master Consolidated Answers. (Doc. Nos. 241, 238, 240, 237.) This Order sets forth further instruction regarding the adoption and use of the Master Consolidated Answers and service of the Complaints.

1 **I. ADOPTION OF MASTER ANSWERS**

2 Each of the Master Consolidated Answers is suitable for adoption and incorpora-
3 tion by reference in response to lawsuits filed by plaintiffs whose pancreatic cancer
4 claims were filed in, transferred to, or removed to this Court pursuant to the JPML
5 Transfer Order. (Doc. No. 1.)

6 Accordingly, by this Order, each Master Consolidated Answer filed by Defendants
7 is deemed to be adopted in every case that has been filed in, transferred to, or removed to
8 this Court as part of MDL No. 2452, which names that Defendant as a party. Defendants
9 need not take any further action for their resection Master Consolidated Answers to
10 become operative.

11 **II. APPLICATION OF MASTER ANSWERS**

12 By the terms of this Order, the Master Consolidated Answers filed by Defendants
13 are deemed to be the Answer to all properly served Complaints, whether Short Form or
14 otherwise, in any case now pending before this Court, transferred to this Court pursuant
15 to 28 U.S.C. § 1407, or filed directly in this Court and treated as part of this proceeding.
16 Defendants are relieved of the obligation to file any further Answer to any complaint not
17 yet answered and/or any complaint in a case subsequently transferred to or consolidated
18 with MDL No. 2452, unless otherwise ordered by this Court. For cases, in this matter,
19 that do not utilize the Master Consolidated Complaint, the Master Consolidated Answers
20 will be deemed the answer to those allegations that correspond to the allegations of the
21 Master Consolidated Complaint, and will be deemed a denial of any allegations not
22 contained in the Master Consolidated Complaint.

23 The adoption of the Master Consolidated Answers in every case is without
24 prejudice to any Defendant later moving to dismiss, asserting any affirmative defenses,
25 filing an amended Answer to specifically address any individual complaints described
26 below, or otherwise challenging the sufficiency of any claim or cause of action in any
27 complaint under the applicable state's law, including any basis permissible under the
28 Federal Rules of Civil Procedure.

1 **III. SERVICE OF PROCESS**

2 The process for the acceptance of service in this Order relates solely to Defendants
3 Amylin, Lilly, Merck, and Novo, and nothing herein is intended to modify the require-
4 ments of the Federal Rules of Civil Procedure with regard to effectuating service on any
5 other defendant(s). It specifically does not apply to any corporate affiliate or partner of
6 Amylin, Lilly, Merck, or Novo.

7 Provided that the Complaint is among those authorized to be included in the MDL
8 proceeding by the JPML's Transfer Order, (Doc. No. 1), Defendants agree, without
9 waiver of any defenses, to accept service of process pursuant to the provisions of Fed. R.
10 Civ. P. 4(d), solely on its own behalf in all Incretin-Based Therapies pancreatic cancer
11 cases in which it is named. This includes all cases that were transferred to, removed to,
12 or filed directly in this MDL pursuant to the Court's direct filing order. (Doc. No. 184.)
13 For such cases transferred to, removed to, or filed directly into the MDL Proceedings
14 pursuant to the Court's direct filing order, the Complaint and notice required under Rule
15 4(d) must be provided to Amylin, Lilly, Merck and/or Novo by e-mailing the documents
16 to each applicable defendant in that Complaint as follows:

- 17 a. Amylin Pharmaceuticals, LLC:
18 Amylin_Service_Incretin_MDL@omm.com
- 19 b. Eli Lilly and Company:
20 byettamdlservice@pepperlaw.com
- 21 c. Merck Sharp & Dohme Corp.:
22 JanuviaJanumetMDLComplaintService@wc.com
- 23 d. Novo Nordisk Inc.:
24 VictozaMDLComplaintService@dlapiper.com

25 General mailing to Lilly, Amylin, Merck, and/or Novo, emailing to counsel for
26 those Defendants (except as provided above), or use of other methods of transmission
27 (e.g., Federal Express or DHL) to those Defendants or their counsel will not be sufficient
28 to effect service. However, this Order does not prevent any plaintiff from effecting

1 service pursuant to any other method authorized under the Federal Rules of Civil
2 Procedure. Upon receipt of a Complaint served in accordance with this Order, and
3 provided that the plaintiff is a resident of the United States, and has named the correct
4 defendant entity or entities, the Defendant(s) served must execute a Waiver of Service of
5 Summons, which is attached hereto as Exhibit A, and file the waiver on the record by
6 Electronic Case Filing.

7 A plaintiff who filed or files his/her complaint directly into the MDL Proceedings
8 pursuant to the terms of this Order and effects service pursuant to the Service of Process
9 section of this Order is not required to file a return of service with the Court.

10 **IV. AMENDMENT OF PLEADINGS PRIOR TO TRANSFER FOR TRIAL**

11 In light of the Master Consolidated Complaint and Master Consolidated Answer
12 procedures, the Court anticipates that amendments to complaints and answers may be
13 required for cases considered for bellwether trials in this MDL, before cases are re-
14 manded to transferor courts, and/or for other good cause. The parties will meet and
15 confer as to those issues, which may be addressed by further order of this Court at the
16 appropriate time.

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18 IT IS SO ORDERED.

19 DATED: January 21, 2014

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22 Hon. Anthony J. Battaglia
23 U.S. District Judge
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